



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

Douglas W. Domenech
Secretary of Natural Resources

4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801
(540) 574-7800 Fax (540) 574-7878
www.deq.virginia.gov

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
CREATIVE URETHANES, INC.
FOR
CREATIVE URETHANES
Registration No. 81636**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Creative Urethanes, Inc., regarding Creative Urethanes, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Facility" means Creative Urethanes, a molded polyurethane manufacturing facility located at 250 Independence Drive, Winchester, in Frederick County, Virginia.
5. "Creative Urethanes" or "Creative Urethanes, Inc." means Creative Urethanes, Inc., a corporation authorized to do business in Virginia, and its affiliates, partners, subsidiaries, and parents. Creative Urethanes, Inc., is a "person" within the meaning of Va. Code § 10.1-1300.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
8. "PCE" means a partial compliance evaluation by DEQ staff.
9. "Permit" means a Stationary Source permit to operate a molded polyurethane manufacturing facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to Creative Urethanes, Inc., on April 25, 2011.
10. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Creative Urethanes owns and operates the Facility in Frederick County, Virginia. The Facility is subject to the Permit which allows for the construction and operation of a molded polyurethane manufacturing facility.
2. On March 20, 2009, DEQ staff conducted a PCE of the Facility for compliance with the requirements of the Virginia Air Pollution Control Law and the Regulations. Based on the evaluation and follow-up information, DEQ staff made the following observations:
 - a. The Facility is operating a stationary source and had not submitted a State Operating Permit application (Form 7) for evaluation by Department staff for permitting applicability.

3. On July 1, 2009, DEQ staff received a Form 7 from Creative Urethanes. The application was deemed complete on February 2, 2011.
4. On March 30, 2010, DEQ staff conducted a PCE at the Facility for compliance with the requirements of the Virginia Air Pollution Control Law and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations:
 - a. The Facility is a stationary source operating without a State Operating Permit.
5. 9 VAC5-80-1120(A) states that "No owner or other person shall begin actual construction, reconstruction or modification of any stationary source without first obtaining from the board a permit to construct and operate or to modify and operate the source."
6. On April 25, 2011, DEQ staff issued the Permit.
7. On April 26, 2011, based on the evaluations and follow-up applicable permitting information, the Department issued Notice of Violation No. AVRO7893 to Creative Urethanes for the violation described in paragraphs C(4) and C(5), above.
8. On May 3, 2011, Creative Urethanes submitted a written response to the NOV, stating that it believe it was classified as a True Minor stationary source during the time that it operated prior to issuance of the Permit.
9. On May 10, 2011, DEQ staff and representatives of Creative Urethanes met to discuss the violation, including Creative Urethanes' written response.
10. During further evaluation of the case, DEQ staff noted that Creative Urethanes failed to submit written notification for the dates of commencement of construction, initial startup and actual startup for the Facility.
11. 9 VAC 5-50-50 (A) requires that, any owner of a new or modified source subject to the provisions of this chapter shall provide written notifications to the board for the date of commencement of construction, initial startup, and actual date of startup for a new or modified source.
12. On June 27, 2011, DEQ staff received the written notification for the dates of commencement of construction, initial startup, and actual startup for the Facility as required by 9 VAC 5-50-50(A).
13. Based on the results of the March 20, 2009 and March 30, 2010 evaluations, the May 10, 2011 meeting, the documentation submitted on July 1, 2009 and May 3, 2011 and the

follow-up applicable permitting information, the Board concludes that Creative Urethanes violated 9 VAC5-80-1120(A) and 9 VAC 5-50-50 (A) as described in paragraphs C(4 & 5) and C(10 & 11), above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Creative Urethanes and Creative Urethanes agrees to pay a civil charge of \$4,160.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Creative Urethanes, Inc. shall include its Federal Employer Identification Number (54-0890959) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Creative Urethanes for good cause shown by Creative Urethanes or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Creative Urethanes admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Creative Urethanes consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Creative Urethanes declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Creative Urethanes to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Creative Urethanes shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Creative Urethanes shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Creative Urethanes shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the Creative Urethanes intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Creative Urethanes. Nevertheless, Creative Urethanes agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

- a. Creative Urethanes petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Creative Urethanes.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Creative Urethanes from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Creative Urethanes and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Creative Urethanes certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Creative Urethanes to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Creative Urethanes.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Creative Urethanes voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 26th day of September, 2011.

Amy Thatcher Owens
Amy Thatcher Owens, Regional Director
Department of Environmental Quality

Creative Urethanes, Inc., voluntarily agrees to the issuance of this Order.

Date: 9/21/11 By: Thomas Heitfeld Treasurer
(Person) (Title)
Creative Urethanes, Inc.

Commonwealth of Virginia

City/County of Frederick

The foregoing document was signed and acknowledged before me this 21 day of September, 2011, by Thomas Heitfeld who is Treasurer of Creative Urethanes, Inc., on behalf of the corporation.

Shannon L. Conner
Notary Public

273280
Registration No.

My commission expires: 1-31-2014

Notary seal:

